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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Implementation of Section 9.)
of the Communications Act)
)
Assessment and Collection)
of Regulatory Fees for the)
1994 Fiscal Year)

MD Docket No. 94-19

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AUG - 7 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: The Managing Director

REQUEST FOR REDUCTION OF FY1994 REGULATORY FEES

Lee Enterprises, Incorporated ("Lee"), by counsel and pursuant to Sections 1.1160 and 1.1166 of the Commission's Rules, hereby requests a reduction in the regulatory fees assessed against and paid by Lee for FY1994, and a corresponding refund of the amount overpaid by Lee in accordance with the fee schedule as it existed at the time such payment was made. Wherefore, the following is shown:

1. Lee is the licensee of television station KGMB-TV, Honolulu, Hawaii, satellite television station KGMV-TV, Hilo, Hawaii and satellite television station KGMD-TV, Wailuku, Hawaii. In response to the Commission's implementation of Section 9 of the Communications Act,¹ Lee paid regulatory fees for FY1994 of

¹ Implementation of Section 9 of the Communications Act, MM Docket No. 94-19, 9 FCC Rcd 5333(1994) ("Report & Order").

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\$15,000 for these Hawaii stations, \$5,000.00 each for its one main and two satellite stations.

2. Recognizing the inequity in the failure of Congress to make any distinction between the fees to be paid by fully-operational television stations and those paid by satellite television station licensees, the Commission stated on reconsideration of its Report & Order that for those licensees that had timely filed petitions for reconsideration or for waiver or reduction of the regulatory fees for satellite stations, it would grant partial waivers and reduce the fees so that each set of parent and satellite stations would pay a regulatory fee based on the total number of households served, and would be assessed a combined regulatory fee equivalent to the fee assessed stations serving markets with the same number of television households.²

3. On July 24, 1995, Lee filed a Petition for Reconsideration and Clarification of the Reconsideration Order to allow Lee to request a reduction of its FY1994 regulatory fees even though it had not requested a waiver or reduction in fees prior to the issuance of the Reconsideration Order. A copy of that Petition is attached hereto as Attachment A, and is incorporated herein by reference. The Commission now has granted the relief sought by Lee in a Memorandum Opinion and Order

² Implementation of Section 9 of the Communications Act, MM Docket No. 94-19, FCC 95-257 (released June 22, 1995) ("Reconsideration Order").

adopted June 16, 1997.³ It directed Lee and similarly-situated parties to file their requests for reduction within 30 days of the date of publication of the Memorandum Opinion & Order in the Federal Register, which occurred on July 23, 1997.⁴

4. Good cause exists for grant of the instant request. As set forth in Lee's Petition for Reconsideration, the satellite stations licensed to it provide much needed service to isolated populations within the Hawaiian Islands in return for almost no financial gain on the part of Lee. The Commission already has recognized the inequity which would result from requiring Lee to pay the full FY1994 regulatory fee for each of these stations.⁵ Reduction in assessment and refund of the balance thus will comport with the Commission's stated findings of good cause for such action.

5. As stated in its Petition for Reconsideration, Lee made a FY1994 payment of \$15,000. The Honolulu, Hawaii ADI television market for 1994 was ranked 70th. For FY1994, VHF television licensees operating in Markets 51-100 were assessed a regulatory fee of \$8,000. Therefore, under the Commission's revised formula set forth in the Reconsideration Order and

³ Implementation of Section 9 of the Communications Act, MD Docket No. 94-19, FCC 97-214 (released July 15, 1997) ("Memorandum Opinion & Order").

⁴ 62 Fed. Reg. 39450 (July 23, 1997).


⁵ Reconsideration Order at ¶19.

Memorandum Opinion & Order, since inclusion of Lee's satellite stations did not alter KGMB-TV's market rank, Lee's total regulatory fee for the three stations in FY1994 was \$8,000, which was \$7,000 less than the amount actually tendered by Lee.⁶

Wherefore, for the reasons stated herein, Lee hereby requests a reduction in its FY1994 regulatory fee assessment for Stations KGMB-TV, KGMV-TV and KGMD-TV to \$8,000. Lee further requests a refund of \$7,000, representing that portion of the payment originally submitted by it which is over and above the adjusted assessment amount.

Respectfully submitted,

LEE ENTERPRISES, INCORPORATED

By: 
Robert L. Galbreath

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(202) 414-9200

Its Attorneys

August 7, 1997

⁶ It appears that the fee payment allocated to KGMB-TV should have been \$8,000, not \$5,000.

ATTACHMENT A

Before the
FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)
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the Communications Act)
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Assessment and Collection of)
Regulatory Fees for the 1994)
Fiscal Year)

To: The Commission

PETITION FOR RECONSIDERATION AND CLARIFICATION

Lee Enterprises, Incorporated ("Lee"), licensee of television station KGMB-TV, Honolulu, Hawaii, satellite television station KGMV-TV, Hilo, Hawaii and satellite television station KGMD-TV, Wailuku, Hawaii, by its attorneys and pursuant to Section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, hereby requests reconsideration and clarification of the Commission's Memorandum Opinion and Order in the above-captioned proceeding.¹ Lee submits that the Commission must reconsider and/or clarify that portion of the Order which provides for partial waivers and reduction of 1994 regulatory fees only for those licensees of satellite television stations that timely filed petitions

¹ Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, MD Docket No. 94-19, FCC 95-257 (released June 22, 1995) ("Order").

for reconsideration or for waiver or reduction of the regulatory fees.

In the Implementation of Section 9 of the Communications Act, 9 FCC Rcd 5333 (1994) ("FY 1994 Report and Order"), the Commission adopted rules to implement Section 9 of the Communications Act, as amended, 47 U.S.C. § 159, providing for the assessment and collection of regulatory fees to cover the cost of the Commission's enforcement, policy and rulemaking, user information and international activities. In the FY 1994 Report and Order, the Commission stated that because Congress did not distinguish between full power television stations and satellite stations in adopting the Schedule of Regulatory Fees, it lacked the authority to reduce regulatory fees for satellite stations. As a number of parties complained at the time, however, because many licensees of full operational television stations have satellite stations serving communities located in sparsely populated rural areas outside of the parent station's coverage area, some licensee's efforts to better serve their communities offered them no monetary benefit yet resulted in the assessment of regulatory fees equal to or larger than the fees for stations serving larger markets.

Lee's service to the island market of Hawaii perfectly illustrates this regulatory anomaly. Lee operates television station KGMB-TV, Honolulu, HI, a VHF, CBS network

affiliate serving Honolulu from the island of Oahu. KGMB-TV, however, does not cover Hilo or parts of the island of Maui. Accordingly, in order to provide local news, information and CBS network program service to residents of these areas, Lee repeats KGMB-TV's signal through satellites at Hilo (KGMD-TV) on Hawaii, and Wailuku (KGMV-TV) on Maui. These stations originate no programming and generate minimal profits. In fact, the total amount of money that Lee has generated in revenue from all of the islands, outside of the island of Oahu, for the past eight years is less than 1/10th of 1% of KGMB-TV/KGMD-TV/KGMV-TV's total revenues. Neither of the two satellites could, as an economic matter, operate on a stand-alone basis. Lee's sole purpose in operating the satellites is to provide expanded coverage and to service as much of the island market as possible.

Under the 1994 Fee Schedule, Lee paid a regulatory fee of \$5,000 each for KGMB-TV, KGMD-TV and KGMV-TV for a total of \$15,000. It thus cost Lee \$15,000 to serve an island market ranked number 70 by Nielsen -- only \$1,000 less than the fee for a VHF station in a top 25 market.

In its Order, the Commission wisely recognized that, because satellites are generally used to serve rural and sparsely populated areas and do not function as full service stations, there are indeed inequities in treating them as full service stations for fee purposes. Thus, the Commission determined that it would grant partial waivers

and reduce the fees for licensees operating satellite station so that each set of parent and satellite stations would pay a regulatory fee based on the total number of television households served, and would be assessed a single regulatory fee comparable to the fee assessed stations serving markets with the same number of television households. The Commission's Order indicates, however, that only those licensees who filed a petition for reconsideration or for waiver or reduction of the fees are entitled to the appropriate refund.

Lee respectfully requests that the Commission reconsider and/or clarify its Order to the extent that it purports to distinguish between similarly situated licensees. As indicated in the Statement of Richard T. Grimm, General Manager of stations KGMB-TV, KGMD-TV and KGMV-TV (attached hereto), at the time Lee was preparing to make the 1994 annual regulatory fee payments for KGMB-TV and its satellites, Mr. Grimm recognized the inequities involved in the 1994 Fee Schedule and expressed his concerns to the undersigned as FCC counsel for Lee. We apprised our client that the NAB and others had made the Commission aware of the inequities inherent in the fee schedule, but that the Commission had determined that Congress had given it no authority to lower the 1994 regulatory fees applicable to satellite stations. We advised and our client concurred, therefore, that preparing a formal petition for reconsideration of the FY 1994 Report and Order might well

amount to a fruitless expense. Nevertheless, as Mr. Grimm's statement indicates, we further advised our client that the transmittal letter accompanying their 1994 fee payment should request a reduction in fees.

Lee's 1994 regulatory fees were paid directly by the licensee to the Commission and did not pass through counsel's office. To date, neither the licensee nor the Commission has been able to locate a copy of a transmittal letter that accompanied the fee payment. It is unclear, therefore, whether Lee did at the time of its payment request a reduction in fees, as was agreed and intended.

Lee submits that it should be entitled to the relief provided satellite stations in the Commission's Order because it recognized and intended to protest the inequities inherent in the 1994 Fee Schedule at the time it made its fee regulatory payments for KGMB-TV, KGMD-TV, and KGMV-TV. Regardless of whether Lee formally requested a reduction in fees at the time of payment, however, such rectification is appropriate to assure administrative due process, which requires uniformity and fairness in the administration of FCC rules and procedures. As demonstrated above, the inequities created by Lee's payment of regulatory fees for its stations serving the Hawaiian islands differ in no substantive respect from those recognized in the

Commission's Order.² Yet, the Commission would seemingly treat these similarly situated parties differently on the basis of whether or not they formally or informally requested a reduction in fees. Such disparate treatment of similarly situated licensees without a rational basis is arbitrary and capricious and violates administrative due process.

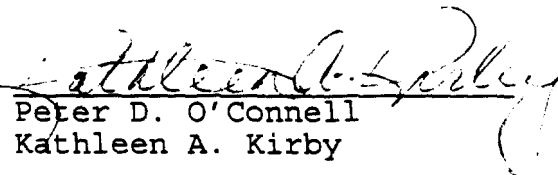
As the Commission has now recognized, it is inequitable and arbitrary to impose a fee for a satellite TV station that operates as a translator on a par with that charged a full service station. This inequity extends to all satellite TV stations that satisfy the substantive criteria detailed in the Commission's Order, not just to those who formally requested a reduction in regulatory fees. Administrative due process dictates that similarly situated licensees be treated similarly. Lee respectfully requests, therefore, that the Commission reconsider and/or clarify its Order to afford Lee the relief accorded to similarly

² It is our understanding, based on discussions with the FCC's Office of General Counsel, that the ABC and NBC affiliates which serve the Hawaiian islands, using both main and satellite television stations in a manner similar to that demonstrated by Lee, will receive a reduction in fees in accordance with the Commission's Order.

situated satellite TV licensees therein.

Respectfully submitted,

LEE ENTERPRISES, INCORPORATED

By: 
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Its Attorneys

July 24, 1995

STATEMENT OF RICHARD T. GRIMM

My name is Richard Grimm. I am General Manager of television station KGMB TV, Honolulu, Hawaii, which is licensed to Lee Enterprises, Incorporated ("Lee").

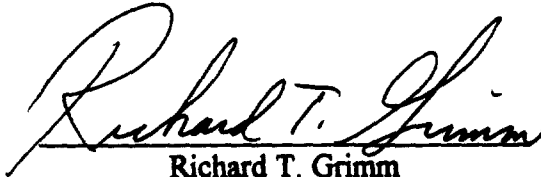
1. I am providing this statement, under penalty of the laws of perjury, to support Lee's request for reconsideration/clarification of the FCC's memorandum opinion and order of June 22, 1995, relating to 1994 regulatory fees.

2. Lee is the licensee of, and I supervise, two satellite television stations in Hawaii: stations KGMV, Wailuku, and KGMD, Hilo. At the time we were preparing to make the required 1994 annual fee payments for these two stations, I contacted Lee's FCC counsel, Peter D. O'Connell of Reed Smith Shaw & McClay, to express my wish that the FCC should reduce the fees due from our two satellite stations. I stated that treatment of these stations in the same manner as KGMB in Honolulu was unreasonable and unfair, given the fact that these satellite stations serve very small areas of population and exist primarily as a service to our audience, rather than as profit centers.

3. Counsel informed me that the FCC had been advised by NAB and other parties about such facts affecting satellite stations, but had determined that the law establishing the fee schedule did not provide discretion for the FCC to lower the FY 1994 fees as to satellite stations.

4. Counsel and I agreed that my transmittal letter accompanying the 1994 fee payments should request reduction of the satellite fees. However, I have been unable to confirm that such a letter was sent, as agreed and intended. Nevertheless, it was at all times my intention to seek remission of the fees, and I specifically contacted counsel to that end. I believe the FCC's recent determination on reducing FY 1994 satellite station fees should apply fully to fees paid by KGMV and KGMD, consistent with my views and intent in 1994. Remission of such fees to one or more other Honolulu licensees, but not to Lee, would be arbitrary and unfair, in my view, since the competing stations are similarly situated in regard to their satellite operations.

Dated this 21st day of July 1995.


Richard T. Grimm